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# Security Council

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## Security Council Committee established pursuant to resolution 1718 (2006)

### Note verbale dated 21 March 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the Republic of Poland to the United Nations in New York presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and has the honour to submit herewith information on measures taken by Poland in order to implement the provisions of Security Council resolution 2397 (2017) (see annex).

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## Annex to the note verbale dated 21 March 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

## Report of Poland on the implementation of Security Council resolution 2397 (2017)

Pursuant to paragraph 17 of Security Council resolution 2397 (2017), Member States are required to report to the Security Council, within 90 days of the adoption of that resolution, on concrete measures they have taken in order to implement effectively the provisions of the resolution.

Poland and the other States members of the European Union have jointly implemented the restrictive measures against the Democratic People's Republic of Korea imposed by the Security Council in its resolution 2397 (2017). The system of sanctions imposed by the Security Council is implemented by the European Union in a uniform manner through the adoption of relevant legislation, such as decisions and regulations enacted on the basis of article 29 of the Treaty on European Union and article 215 of the Treaty on the Functioning of the European Union, respectively. It should be noted that, from a legal perspective, a decision defines the approach of the European Union to a particular matter of a geographical or thematic nature, and member States are required to ensure that their national policies conform to European Union positions. A regulation has a direct binding effect upon all persons and entities, without any requirement that it be incorporated into national legislation.

The common measures adopted by the European Union are listed below.

**Common measures**[1]

(a) Council Implementing Decision (CFSP) 2018/16 of 8 January 2018 implementing Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea, which implements the designation of additional persons and one additional entity (travel ban and asset freeze);

(b) Council Implementing Regulation (EU) 2018/12 of 8 January 2018 implementing Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea, which gives effect to the measures set out in Council Implementing Decision (CFSP) 2018/16;

(c) Council Implementing Regulation (EU) 2018/87 of 22 January 2018 implementing Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea;

(d) Council Decision (CFSP) 2018/293 of 26 February 2018 amending Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea, which sets out the commitment of the European Union to implementing the measures contained in Security Council resolution 2397 (2017);

(e) Council Regulation (EU) 2018/285 of 26 February 2018 amending Council Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea, which gives effect to the measures set out in Decision (CFSP) 2018/293;

(f) Council Implementing Regulation (EU) 2018/286 of 26 February 2018 implementing Regulation (EU) 2017/1509 concerning restrictive measures against

[1] All common measures are published in the *Official Journal of the European Union*.

the Democratic People's Republic of Korea, which lists the vessels for which access to ports in the territory of the European Union is prohibited.

The relevant obligations and prohibitions set out in European Union legislation are as follows:

- The European Union had already introduced a full prohibition on the export of crude oil in Council Decision (CFSP) 2017/1860 of 16 October 2017, with the possibility of exemptions for exports for humanitarian purposes if approved in advance, on a case-by-case basis, by the Committee. In Decision (CFSP) 2018/293, it is further specified that the prohibition applies to the direct or indirect supply of all crude oil to the Democratic People's Republic of Korea, whether or not originating in the territories of the member States, including by means of pipelines, rail lines or vehicles;
- The European Union had already introduced a full prohibition on the export of all refined petroleum products in Council Decision (CFSP) 2017/1860, which included a provision that the export of refined petroleum products could be authorized by the competent authority of a member State for humanitarian purposes under the conditions mentioned in paragraph 14 of resolution 2375 (2017). In Council Decision (CFSP) 2018/293, it is now further specified that the amount of refined petroleum products authorized for export cannot exceed 500,000 barrels per year and that the means of export include pipelines, rail lines and vehicles;
- Prohibition on importing food and agricultural products, machinery, electrical equipment, earth and stone (including magnesite and magnesia), wood and vessels;
- Prohibition on the acquisition of fishing rights from the Democratic People's Republic of Korea;
- Prohibition on exporting all industrial machinery, transportation vehicles, iron, steel and other metals, unless it has been determined by a member State that the provision of spare parts is needed to maintain the safe operation of passenger aircraft of the Democratic People's Republic of Korea;
- Obligation to repatriate to the Democratic People's Republic of Korea immediately, and no later than 21 December 2019, all nationals of that country who are earning income in the jurisdiction of a member State and all government safety oversight attachés of the Democratic People's Republic of Korea who are monitoring its workers abroad, unless certain exceptions apply, subject to applicable national and international law;
- Obligation for member States to seize, inspect and impound any vessel in their ports and the power to seize, inspect and impound any vessel subject to their jurisdiction in their territorial waters where there are reasonable grounds to believe that the vessel has been involved in activities, or in the transport of items, prohibited by the Security Council in its various resolutions on the Democratic People's Republic of Korea. Under certain conditions, the provisions for the impounding of vessels shall cease to apply;
- Obligation to cooperate as promptly as possible with another State which has information that leads it to suspect that the Democratic People's Republic of Korea is attempting to export illicit cargo and where that other State requests additional maritime and shipping information;
- Prohibition on providing insurance or reinsurance services to vessels identified as being involved in activities, or in the transport of items, prohibited by the Security Council in its various resolutions on the Democratic People's Republic

of Korea, unless the Committee has determined, on a case-by-case basis, that the vessel is engaged in activities only for livelihood or humanitarian purposes;

- Obligation to deregister any vessel where there are reasonable grounds to believe that the vessel has been involved in activities, or in the transport of items, prohibited by the Security Council in its various resolutions on the Democratic People's Republic of Korea;
- Prohibition on providing classification services to vessels identified as being involved in activities, or in the transport of items, prohibited by the Security Council in its various resolutions on the Democratic People's Republic of Korea, unless approved in advance by the Committee on a case-by-case basis;
- Prohibition on registering any vessel that has been deregistered by another State unless approved by the Committee in advance on a case-by-case basis;
- The prohibition on exporting new or used vessels had already been introduced in Council Decision (CFSP) 2017/345;
- Obligation to seize and dispose of items the export of which is prohibited under resolution 2397 (2017);
- Prohibition on satisfying any claim in connection with any contract or transaction the performance of which has been affected by the measures provided for in resolution 2397 (2017).

The above-mentioned Council Regulations are binding in their entirety and directly applicable in all States members of the European Union. Council Regulation (EU) 2017/1509 requires member States to determine the penalties applicable to infringements of their provisions. The penalties determined by Poland are set out in separate legislation, such as the Act of 6 June 1997 — Penal Code (Official Journal of Laws 2016, item 1137), the Act of 10 September 1999 — Fiscal Penal Code (Official Journal of Laws 2013, item 186), the new legislation on counteracting money-laundering and terrorism financing and widening the scope of a number of existing measures (1 March 2018; yet to be promulgated) and the Act of 12 December 2013 on Foreigners (Official Journal of Laws 2016, item 1990).

Poland has robust national legislation in place that requires an export authorization for the sale, supply, transfer or export of arms and related materials to third countries and an authorization for the provision of brokering services and other services relating to military activities, which, together with Council Decision (CFSP) 2016/849, provides the basis for the enforcement of the arms embargo against the Democratic People's Republic of Korea and the ban on related brokering services.

Under the legislative framework in Poland, the trade in goods and technologies such as military equipment and dual-use goods, including technologies relating to weapons of mass destruction, is subject to control by the State and is governed by the Act of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Significance for State Security and for Maintaining International Peace and Security (Official Journal of Laws 2013, item 194) and the relevant implementing legislation. The national system is consistent with the policy of the European Union in matters relating to the control of export of arms and dual-use goods. The comprehensive national export control regime in force is based on close cooperation among various authorities, such as the Customs and Tax Administration, the Internal Security Agency and the Ministry of Entrepreneurship and Technology, which is responsible for granting the relevant licences.

As far as the freezing of assets and prohibition on making funds available are concerned, it should be noted that the Democratic People's Republic of Korea remains on the Financial Action Task Force list of jurisdictions that have strategic deficiencies in their anti-money-laundering and counter-terrorist financing regimes. Under statutory

requirements, as provided for in the Act on Counteracting Money Laundering and Terrorism Financing, financial market entities are obliged to apply enhanced customer due diligence measures using the risk-based approach. In accordance with Council Regulation (EU) 2017/1509, it is mandatory for all covered institutions to freeze the assets and economic resources of, and to refuse to make funds (economic resources) available to, persons and entities listed in the annexes thereto.

With regard to restrictions on admission (visa ban), Poland has enacted the national legislation indicated below, which, together with Council Decision (CFSP) 2016/849 and Regulation (EC) No 539/2001, provides the basis for the refusal of admission and denial of requests for visas. The list of individuals subject to the travel ban was amended by Council Implementing Decision (CFSP) 2018/16.

The Act of 24 August 2007 on the Participation of the Republic of Poland in the Schengen Information System and the Visa Information System (Official Journal of Laws 2014, item 1203) contains comprehensive rules on participation in the Schengen Information System. The Act of 12 December 2013 on Foreigners (Official Journal of Laws 2016, item 1990) lays down rules and conditions for the entry of foreigners into the territory of the Republic of Poland, their passage through the territory, their stay in and departure from the territory, the relevant procedures and the competent authorities. The latter act also provides for a register of foreigners whose entry or stay in the territory of the Republic of Poland is undesirable. One of the mandatory prerequisites for inserting data on a specific foreigner in the register is when the entry or stay of the foreigner in the territory of the Republic of Poland is undesirable owing to obligations resulting from the provisions of international agreements ratified by and binding upon the Republic of Poland.

The entry of foreigners into the national territory is subject to control by the Border Guard in line with the aforementioned legislation and in accordance with the statutory principles set out in the Act of 12 October 1990 on the Border Guard (Official Journal of Laws 2016, item 1643) and the Act of 12 October 1990 on State Border Protection (Official Journal of Laws 2017, item 660). The statutory competences of the Border Guard include preventing persons from crossing borders illegally and monitoring adherence to regulations on the residence of foreigners and the visa regime. In fulfilling its duties, the Border Guard checks the validity of documents and visas authorizing the entry of foreigners into the territory of Poland and is also entitled to search persons and the contents of baggage and cargo in order to prevent the smuggling of cash and the transportation of prohibited and restricted items. There is enhanced scrutiny in screening travellers' data against the list of persons subject to international sanctions.

With regard to the restrictions on nationals of the Democratic People's Republic of Korea, the provisions set out in Council Decision (CFSP) 2016/849, as amended by Council Decision (CFSP) 2018/293, along with the amended Act on Foreigners, constitute the legal basis for the competent authorities to refuse to grant temporary residence for nationals of the Democratic People's Republic of Korea and to revoke temporary residence permits that have already been granted.

In order to enact the new restrictions set out in paragraph 8 of resolution 2397 (2017), article 26a of Council Decision (CFSP) 2016/849 was amended by Council Decision (CFSP) 2018/293 by inserting paragraph 5, which sets forth the requirement to repatriate nationals of the Democratic People's Republic of Korea immediately, and no later than 21 December 2019. This requirement does not apply to cases where the member State determines that a national of the Democratic People's Republic of Korea is also a national of a member State, or where the repatriation of a national of the Democratic People's Republic of Korea is prohibited, subject to applicable national and international law, including international refugee law and international human rights law, and the Agreement between the United Nations and the United

States of America regarding the Headquarters of the United Nations and the Convention on the Privileges and Immunities of the United Nations.

As mentioned above, a Council decision specifies the approach of the European Union to a specific issue, and the member States are obliged to ensure that their national policies are in line with the positions of the European Union. Therefore, States are given latitude in adopting appropriate national measures to ensure full implementation of their international obligations.

To this end, the national legislative framework of Poland has been amended accordingly. In article 100, paragraph 1, point 4 of the Act on Foreigners it is explicitly set out that a temporary residence permit shall be refused if such refusal is justified by State defence or security, the preservation of security and public order or obligations arising from the provisions of the international agreements ratified by and applicable to the Republic of Poland. The amendment that entered into force on 12 February 2018 specifies the prerequisites for refusal to grant a temporary residence permit. Moreover, article 101, point 3, of the Act on Foreigners directly refers to enumerated categories that constitute legal grounds for the revocation of a temporary residence permit granted to a foreigner. Among the statutory prerequisites are the criteria stipulated in article 100, paragraph 1, point 4, including obligations arising from the provisions of the international agreements ratified by and applicable to the Republic of Poland. Consequently, as a result of either a refusal to grant a temporary residence permit or a decision to revoke a temporary residence permit previously granted to a foreigner, the foreigner concerned will be required by law to leave the territory of Poland within 30 days. In any cases where this requirement is breached, the Border Guard will initiate the relevant procedures in accordance with the statutory provisions.

The measures described above may be adequately enhanced by applying, on a case-by-case basis, other provisions such as the entry of data on a specific foreigner in the register of foreigners whose stay in the territory of the Republic of Poland is undesirable. One of the mandatory prerequisites for inserting data on a specific foreigner is when the entry or stay of the foreigner in the territory of the Republic of Poland is undesirable for reasons relating to State defence or security, the preservation of public safety and order or the interests of the Republic of Poland.

With regard to the number of workers from the Democratic People's Republic of Korea at the time when resolution 2397 (2017) was adopted, in December 2017, there were no more than 445 citizens of the Democratic People's Republic of Korea whose purpose of stay in Poland was to work. By the end of February 2018, that number had decreased to no more than 396. This shows that we have already reduced the number of citizens of the Democratic People's Republic of Korea in Poland by 12 per cent, and we are making every effort to implement the provisions of the resolution fully and as quickly as possible. We will continue to strive to ensure that the effective implementation of the provisions of the resolution takes into account the humanitarian aspect and human rights of nationals of the Democratic People's Republic of Korea.

Considering the robust legal framework described above, and supported by the relevant guidelines disseminated to the competent voivodships, we firmly believe that Poland will meet its obligation to repatriate nationals of the Democratic People's Republic of Korea within the time frame specified in resolution 2397 (2017).

We would also like to assure you that, in the light of the gravity of the violation of international obligations by the Democratic People's Republic of Korea, all issues pertaining to activities of that country are given the highest consideration and are subject to enhanced vigilance.

Taking into consideration the above-mentioned measures, we firmly believe that Poland acts fully in line with its international obligations.